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No 73-441

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In the Supreme Court of the United States

OCTOBER TERM, 1973

HURD-DARBEE, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner, an independent contractor which supplied the United States Air Force with language instructors under a one-year contract extending through August 31, 1965, brought this suit in the United States District Court for the Eastern District of Michigan, seeking damages for an alleged wrongful conversion and expropriation of the intangible value of its business organization.[1] Petitioner's claims were based on the fact that, before the termination on August 31, 1965, of the individual employment contracts between petitioner and the instructors who it had hired and paid, the Air Force determined not to rely further upon an

[1] The complaint also sought damages for the alleged improper action of government procurement officers in processing bids to provide language services to the Air Force after August 31, 1965.

independent contractor for such services and offered civilian employment to the instructors, all of whom accepted, so that as of September 1 the Air Force employed directly the entire teaching force petitioner had previously furnished under its contract.[2] The district court entered judgment for the United States (Pet. App. A) and the court of appeals affirmed (Pet. App. B), in an opinion upon which we rely in the main.

1. Petitioner had no "property" interest in a continuing contractual relationship with the Air Force after August 31, 1965. On that date petitioner's contract with the government expired by its own terms, and the United States was under no obligation to renew it. Petitioner was thus deprived of no property by the United States. Moreover, as the court of appeals noted (Pet. App. B, 32), losses of business opportunities are not compensable under the just compensation clause of the Fifth Amendment.[3] Cf. *United States ex rel. T.V.A.* v. *Powelson,* 319 U.S. 266, 284.

2. Petitioner's claim that its employees were wrongfully hired away by the Air Force is, at bottom, a claim that, but for the government's interference, petitioner might have retained the services of its employees and marketed them elsewhere. The complaint thus seeks recovery for the government's interference with

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[2] The Air Force undertook direct hiring of language instructors only after it was constrained to reject the contract bids of petitioner and two other bidders for failure to satisfy the financial requirements of the Air Force (Pet. App. B, 29; Pet. App. A, 18-19). Petitioner satisfactorily completed its own contract with the Air force on August 31, 1965.

[3] The lower courts, in any event, lacked jurisdiction over petitioner's claim for just compensation, which would lie (if at all) only in the Court of Claims, as it is over $10,000. See 28 U.S.C. 1491, 1346(a).

unidentified prospective contractual relations which petitioner anticipated. The United States cannot be held liable on this ground. An exception to the Tort Claims Act, 28 U.S.C. 2680(h), bars any recovery against the federal government for tortious interference with prospective contractual relations. See, *e.g.*, *Small* v. *United States*, 333 F. 2d 702, 704 (C.A. 3).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1973.